IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 22267 of 1995

Between:

M/s. Dhanalakshmi Rice Mill,

Chettigunta Road, Nellore, rep. by

Its Proprietor P.venkata Subbaiah …Petitioner

and

1)A.P. State Electricity Board,

rep. by its Secretary, Vidyut Soudha,

Somajiguda, Hyderabad.

2)The Chief Engineer, A.P.S.E.B.,

Nellore zone, Vidyut bhavan,

Nellore

3)The Superintending Engineer-Assessments,

A.P.S.E.B., Cuddapah.

4)The Assistant Divisional Engineer-Operation,

Zone-II, A.P.S.E.B., 30/332, Balaji Nagar,

Nellore.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the condition No.39(9) of Terms and conditions of supply notified by he first respondent under Section 49 of the Electricity (supply) Act, 1948, as ultra vires the power of the board and consequently, quash the order passed by the second respondent in Appeal No.113/94 dated 2.9.1995 confirming the orders passed by the third respondent in proceedings No. SE/A/CDP/FAO/D.NLR/PF/36/94-95/D.No.508/94 dated 15.10.1994 as illegal, arbitrary and without authority and jurisdictioin.

Counsel for the Petitioner: MR.P.SRIDHAR REDDY

Counsel for the Respondents : SMT.M.VINOBHA DEVI, S.C. for A.P. Transco.

The Court made the following :

O R D E R :

Heard both sides.

The petitioner, which is a rice mill, seeks to assail by way of Writ of Mandamus impugned orders dated 15.10.1994 by the third respondent herein assessing the amount towards pilferage of energy, as confirmed in appeal by the second respondent herein as per order dated 02.09.1995.

The facts, in brief, are that the rice mill of the petitioner was inspected by the Assistant Engineer concerned on 06.08.1994 whereupon it was found that all the four meter cover seals were found tampered and flattened, which, according to the respondents, constituted pilferage of energy. Subsequently, a provisional assessment was made on 27.08.1994, to which the petitioner filed explanation on 12.09.1994. Thereafter, final assessment was made on 15.10.1994 rejecting the petitioner's contention and ultimately assessing the amount to Rs.74,335/-.

The main submission on behalf of the petitioner is that having regard to the alleged assessment towards pilfered energy, the respondents have taken into account normal consumption with the other existing

rice mills in Nellore town, whereas the petitioner is a raw rice mill and not a boiled one and further, there could not have been similar consumption as that of the other rice mills and therefore, the assessment is quite on higher side.

The submissions made on behalf of the petitioner were sought to be repelled on behalf of the respondents.

Considering the submissions made on either side and on perusal of the material, it is seen that there is no dispute to the fact that the petitioner is a newly established rice mill in an area where there are several existing rice mills for quite a long time. No doubt, several other contentions are sought to be urged on behalf of the petitioner in regard to the allegation of pilferage of energy. However, the same can not be gone into under Article 226 of the Constitution of India, more so, when they were not found favour with, by both the authorities concurrently. However, in regard to the amount as arrived at and the principles of assessment as followed, there is no dispute to the fact that the respondents have sought to place reliance on the normal consumption in respect of the other existing aspects which even on a *prima facie* approach, could not form any valid basis especially when admittedly, the petitioner is a raw rice mill. It is represented during course of proceedings that the petitioner paid Rs.44,416/-, and subsequently during pendency of this Writ Petition, a further amount of Rs.10,000/- has been paid by him.

Taking into consideration the date of inspection which is as long back as on 06.08.1994 and the amount already paid by the petitioner, it would suffice in the interest of justice, to restrict the assessment amount to the extent already paid by the petitioner i.e. Rs.54,416/- in place of Rs.74,335/- as arrived at by the third respondent.

The Writ Petition is, accordingly, partly allowed. No costs.

(B.Prakash Rao, J.)

16.12.2004

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Thursday, the sixteenth day of December Two thousand and four.

… Registrar

Copy to:

1)The Secretary, A.P. State Electricity Board, Vidyut Soudha,

Somajiguda, Hyderabad.

2)The Chief Engineer, A.P.S.E.B., Nellore zone, Vidyut bhavan,

Nellore

3)The Superintending Engineer-Assessments, A.P.S.E.B., Cuddapah.

4)The Assistant Divisional Engineer-Operation, Zone-II, A.P.S.E.B., 30/332, Balaji Nagar, Nellore.

5) Two CD copies.